

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GEORGE L. DINGESS,

Petitioner,

vs.

Civil Action 2:13-cv-1240
Judge Frost
Magistrate Judge King

TIMOTHY BUCHANNON (WARDEN),

Respondent.

ORDER AND REPORT AND RECOMMENDATION

Petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. *Petition*, ECF 1. Respondent was ordered to answer the petition by January 8, 2014. *Order to Show Cause*, ECF 2. No response was filed by that date. On February 7, 2014, respondent filed a motion for an extension of time, explaining that the failure to timely respond was due to a calendaring error. *Motion for Extension of Time*, ECF 5. In response to that motion, petitioner has filed a motion for immediate relief and his release from confinement. *Motion to Grant Relief*, ECF 6.

A court may grant a request for an extension of time "if the party failed to act because of excusable neglect." Fed. R. Civ. P. 6(b)(1)(B). The Court concludes that respondent has adequately explained his failure to timely respond and has established excusable neglect. Accordingly, the motion for an extension of time, ECF 5, is **GRANTED**. Respondent may have until March 10, 2014 to respond to the petition.

Petitioner's *Motion to Grant Relief* seeks, essentially, judgment

by default in this habeas corpus action. However, judgment by default, at least without an evidentiary hearing, is inappropriate in a habeas corpus action. *Allen v. Perini*, 424 F.2d 134, 138 (6th Cir. 1970) ("We concludes that the failure of the Office of the Attorney General of Ohio to file a timely return does not afford a basis for *instanter* relief."). It is therefore **RECOMMENDED** that petitioner's *Motion to Grant Relief*, ECF 6, be denied.

If any party seeks review by the District Judge of this *Report and Recommendation*, that party may, within fourteen (14) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy thereof. Fed. R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to *de novo* review by the District Judge and of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *Smith v. Detroit Fed'n of Teachers, Local 231 etc.*, 829 F.2d 1370 (6th Cir. 1987); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

February 11, 2014
(Date)

s/Norah McCann King
Norah M^cCann King
United States Magistrate Judge